# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 882

THOMAS R. REDDY, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on November 1, 1968 (Pet. App. B). On November 26, 1968, Mr. Justice Fortas extended the time within which to file a petition for a writ of certiorari, to and

including December 31, 1968. The petition was filed on December 28, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether petitioner, who does not contend that Congress is without power to rely upon his status as a convicted felon to bar his transportation of firearms in interstate commerce under 15 U.S.C. 902(e), may nevertheless challenge the constitutionality of that statute on the ground that it is drawn so broadly as to reach others against whom Congress could not rationally attach such a disability.

## STATUTE INVOLVED

15 U.S.C. 902(e), as amended in 1961, 75 Stat. 757, provides:

> It shall be unlawful for any person who is under indictment or who has been convicted of a crime punishable by imprisonment for a term exceeding one year or who is a fugutive [1] from justice to ship, transport, or cause to be shipped or transported in interstate or foreign commerce any firearm or ammunition.

## STATEMENT

Following a trial in the United States District Court for the District of Massachusetts, a jury convicted petitioner, as a person who had previously been convicted of a crime punishable for a term exceeding

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[1] So in original.

one year, of causing the interstate shipment of ten Smith and Wesson .38 caliber revolvers on January 13, 1967, in violation of the Federal Firearms Act, 15 U.S.C. 902(e). He was sentenced to four years' imprisonment. The court of appeals affirmed (Pet. App. A).

The evidence is not in dispute. At trial, the government proved that in 1965, petitioner had, on his plea of guilty, been convicted of theft of United States obligations from the mail and fraudulent alteration of such obligations, in violation of 18 U.S.C. 495 and 1708 and that both of these offenses were punishable by more than one year in jail (Tr. 6-13).[2] The evidence further showed that on January 13, 1967, petitioner purchased three Smith and Wesson .38 caliber revolvers from Wilson's Sports Equipment Company, in Rutland, Vermont (Tr. 45-47, 62). At that time, petitioner advised the manager of the firearms department that he was in the market for additional revolvers of this type (Tr. 48, 63). The manager, Mr. MacIntosh, advised that he did not have any more in stock, but could obtain them in Massachusetts (Tr. 48, 64, 74). Petitioner gave MacIntosh an order for ten guns leaving his name, address and phone number (Tr. 48-49, 52, 53). Shortly thereafter, MacIntosh placed an order for eighteen such weapons with a factory representative of the Smith and Wesson Com-

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[2] 18 U.S.C. 495 carries a prison term of not more than ten years; and 18 U.S.C. 1708 carries a prison term of not more than five years.

"Tr." designates the trial transcript which is on file with the Clerk of this Court.

pany, in Massachusetts (Tr. 31, 49-50, 52, 75-77). The weapons were subsequently transported from Springfield, Massachusetts to the Wilson store in Rutley, Vermont (Tr. 23-24). Petitioner was thereafter notified that his order was ready and, on February 2, 1967, he picked up the ten revolvers that he had ordered on January 13, paying $71.50 each (Tr. 53, 55-56, 57, 62).

## ARGUMENT

By 15 U.S.C. 902(e) Congress made it a crime for those who are under indictment for a felony, or are fugitives from justice, or, like petitioner, are convicted felons, to ship, or cause to be shipped, firearms in interstate commerce.[3] The courts of appeals have uniformly held that Congress could rationally conclude that persons falling into the above categories—in this case one who in the past has been convicted of a serious crime—had a potential for misuse of firearms which provided a sound basis for the statutory prohibition. See *Cases* v. *United States*, 131 F.2d 916, 921

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[3] Prior to 1961, the underlying felony which triggered the statutory bar had to be a "crime of violence" (52 Stat. 1250). The statute was amended in 1961 to make the prohibitions applicable "to any crime which measures up to the Federal standard of a felony; that is, any crime punishable by imprisonment for a term exceeding 1 year" (S. Rep. No. 364, 87th Cong. 1st Sess. p. 2; H. Rep. No. 1202, 87th Cong. 1st Sess. p. 1). The amendment was passed at a time when "the infiltration of racketeering into our society and the exploding crime rate [had] increasingly become a cause for national concern". Its purpose was "to assist local authorities in the common assault against crime" by making "it more difficult for the criminal elements of our society to obtain firearms." (*Ibid.*).

(C.A. 1), certiorari denied *sub nom. Velazquez* v. *United States*, 319 U.S. 770; *Quinones* v. *United States*, 161 F.2d 79, 80-81 (C.A. 1), certiorari denied, 331 U.S. 833; *Schook* v. *United States*, 337 F.2d 563, 567-568 (C.A. 8); *United States* v. *Lauchli*, 371 F.2d 303, 314 (C.A. 7); *DePugh* v. *United States*, 393 F. 2d 367, 370 (C.A. 8), certiorari denied, October 14, 1968 (No. 169, O.T. 1968).

While petitioner has conceded that the statutory classification is not arbitrary or unreasonable as applied to those, like himself, who have been convicted of serious crimes (see Pet. 5, 7 and Pet. App. A 10), he contends that the statute is so "indiscriminately and drastically drawn" that it might reach persons whom Congress could not rationally include within the statutory proscription (Pet. 7). But, having recognized the statute's validity as applied to him,[4] petitioner should not be allowed to assert its unconstitutionality if applied to other persons in other circumstances. See, *e.g. United States* v. *Raines*, 362 U.S. 17, 20-21; *United States* v. *National Products Dairy Corp.*, 372 U.S. 29. Nothing in *Aptheker* v. *Secretary of State*, 378 U.S. 500, requires a different result. In that case, the indiscriminate breadth of the statute was deemed to have an inhibitory effect on the right to travel, a liberty guaranteed by the Fifth

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[4] The court of appeals accurately noted that this was a "reasonable concession" (see Pet. App. A 10, n. 1), in view of the fact that petitioner's conviction had occurred only about two years before the prohibited transportation and involved the serious felonies of theft of government obligations from the mails and alteration of these obligations.

Amendment and one "closely related to the rights of free speech and association." 378 U.S. at 517. See, also, *United States* v. *Robel*, 389 U.S. 258, 265-266. In short, the decisions relied upon by petitioner permit a defendant to challenge a statute on its face if its all encompassing sweep might "in itself deter constitutionally protected and socially desirable conduct." *United States* v. *National Dairy Corp.*, *supra*, 372 U.S. at 36. There is no similar justification for entertaining an overbreadth argument in this case. The transportation of weapons in interstate commerce is hardly "basic in our democratic scheme". *United States* v. *Robel*, *supra*, 389 U.S. at 263. Whatever constitutional claims those at the edges of 15 U.S.C. 902(e) might raise can well await the case in which those interests are directly presented.[5]

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[5] It should be noted in this regard that in 1965 Congress amended the Federal Firearms Act to authorize the Secretary of Treasury to grant a convicted felon relief from the statutory bar, where it is established to the satisfaction of the Secretary "that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to conduct his operations in an unlawful manner, and that the granting of the relief would not be contrary to the public interest." 79 Stat. 788, 15 U.S.C. (Supp. III) 910.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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